

**ST. REGIS MOHAWK TRIBAL COURT      ST. REGIS MOHAWK INDIAN RESERVATION**

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<b>Evelyn Sawyer</b>	)	
<b>Eileen Sawyer</b>	)	
<b>Appellant</b>	)	<b>DECISION AND ORDER</b>
	)	
<b>-V-</b>	)	<b>Case No.: 12-LND-00004</b>
	)	
<b>Anthony Laughing</b>	)	
<b>Defendant</b>	)	

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**PROCEDURAL HISTORY**

Eileen Sawyer, on behalf of her mother, Evelyn Sawyer, filed an appeal of a Land Dispute Tribunal Decision dated February 17, 2012 in St. Regis Mohawk Tribal Court on March 21, 2012. Ms. Eileen Sawyer it should be noted, has a Power of Attorney from her mother Ms. Evelyn Sawyer. Appellant is seeking a reversal of the Land Dispute Tribunal Decision and the parcel of land in dispute be returned to Ms. Evelyn Sawyer.

Following the filing of the appeal with the Court, a twenty day civil summons was issued on May 1, 2012 that was to be served upon the Defendant, Mr. Anthony Laughing, along with a copy of the complaint.

After multiple attempts by the Appellant to serve the summons and complaint upon Mr. Anthony Laughing, and also numerous attempts by the Court to contact Mr. Anthony Laughing, a Notice of Appearance was filed with the Court by Mr. Daniel Pease on November 13, 2012, indicating he is representing Mr. Anthony Laughing in the matter at bar.

Following a hearing in St. Regis Mohawk Tribal Court on November 14, 2012 in which all parties were in attendance a statement of issues was filed with the Court by Appellant in which Ms. Eileen Sawyer identified all of the arguments that she wished to pursue.

On February 25, 2014 the Court issued letters to all parties in the matter before the Court informing them that there would be a status conference held in St. Regis Mohawk Tribal Court on March 19, 2014. The status conference was held on March 19, 2014 to clarify issues and establish if further litigation was necessary to address issues that had been brought by the Appellant due to a portion of the audio record from the Land Dispute Tribunal being inaudible.

## INTRODUCTION

In reviewing the matter of Sawyer v Laughing 12-LND-00004, the Court has found an argument presented by the Appellant which requires examination and clarification. The Appellant claims that during the St. Regis Mohawk Land Dispute Tribunal (hereinafter SRMT LDT) final hearing, that a party who was to testify on behalf of the Complainant was denied this opportunity. *See*, Record Statement of Issues December 13, 2012.

The Appellant also claims that two SRMT LDT panel members should have recused themselves from the hearing due to allegations of conflict of interest. *Id.* The Court, will examine these arguments to ensure a fair and equitable solution to this issue.

## ANALYSIS

During the course of the SRMT LDT final hearing in the matter of Sawyer v Laughing, there appears to have been a malfunction with the recording equipment used to capture the audio record during this proceeding. The fact that the second and final hearing audio is not available to the Court for the record makes the record incomplete and the Court must note that for this discussion.

Due to the lack of the audio recording for the SRMT LDT final hearing, the Court is forced to base its analysis on the record that is before it. This record as provided for by SRMT law, is developed by the SRMT LDT, and this is what the Court bases its review upon. *See*, SRMT Land Dispute Resolution Ordinance XV (B) (2). Further, the SRMT Court has afforded the parties an opportunity to make submissions to the Court on this issue.

Apparently, during the final SRMT LDT hearing, Ms. Joyce King was going to testify on behalf of the Appellant, Ms. Evelyn Sawyer. *See*, Record Statement of Issues December 13, 2012. This also appears in the SRMT LDT decision dated February 17, 2012.

The Appellant in her statement of issues contends that because of an ostensible conflict of interest between Ms. Joyce King and SRMT LDT panel member Ms. Darlene Francis, Ms. King requested that Ms. Francis recuse herself from the hearing. *Id.* Ms. Francis declined to remove herself from the hearing and due to this, according to the record, Ms. Joyce King refused to offer her testimony for the SRMT LDT. In the aforementioned statement of issues, the Appellant states that this missing testimony is an issue which they wish to address on appeal.

On prior occasions the Court has had to address potential conflicts of interest with the Judge or Court staff. *See*, White v White 10-LND-00009 and Thompson v Smoke 10-LND-00010. An alleged conflict of interest between a potential witness and an SRMT LDT panel member can be addressed by the Court in the same manner in which the Court deals with potential conflict of interest issues regarding an SRMT Court Judge and a party to a case that is being heard by that Judge.

As such, the issue of conflict of interest was fully examined in White v White 10-LND-00009 and Thompson v Smoke 10-LND-00010 and the Court will answer this issue in the same

manner that it has in the prior cases mentioned. In those cases we followed the SRMT Civil Code in choice of applicable law and reliance upon federal rules of civil procedure when necessary.

As the Court noted in *White v White*, "it is clear that pursuant to SRMT Laws currently in place there is no automatic disqualification based upon a perceived conflict of interest." This is in accordance with the St. Regis Mohawk Tribe Civil Code, which provides clear language that federal law is far more preferable than many other choices of law. *See*, SRMT Civil Code V (A) (1).

The Court can also find assistance in the SRMT Code of Judicial Conduct which provides that, "A Judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where the judge has a personal bias or prejudice concerning a party or their lawyer or the judge has personal knowledge of disputed evidentiary facts or made public statements or comments or has an economic interest which could give rise to a personal bias or prejudice;" *See*, SRMT Code of Judicial Conduct Section 5 (D) (1).

The Court finds further guidance in federal law at 28 U.S.C. §455 (2010). This law finds that a Judge shall disqualify himself in the following circumstances:

He or his spouse, or a person within the **third degree of relationship** to either of them, or the spouse of such a person:

- i. Is a party to the proceeding, or an officer, director, or trustee of a party;
- ii. Is acting as a lawyer in the proceeding;
- iii. Is known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding;
- iv. Is to the Judge's knowledge likely to be a material witness in the proceeding. *Id.* (B)(5)(i)(ii)(iii)(iv)

In the record before the Court there is nothing to indicate that Ms. Joyce King and Ms. Darlene Francis are within any degree of familial relationship. There is also nothing in the record indicating that a spouse of either Ms. King or Ms. Francis would present a conflict of interest problem. There is no evidence in the record that there was a personal bias or economic interest on the part of Ms. Francis or Ms. General that would violate SRMT Law or the appellant's right to due process in front of an impartial and unbiased tribunal.

However, the Court again takes guidance from our prior decision where we determined that, "the next test would be to determine if the Judges impartiality might reasonably be questioned." *See*, *White v White*. There is nothing in the record which indicates that Ms. Darlene Francis did not act impartially in the SRMT LDT proceedings. Based upon the guidelines that the Court has just provided, the Court does not find merit in the argument for conflict of interest on the part of Ms. Darlene Francis.

The Appellant also argued that another SRMT LDT member, Ms. Rowena General had a conflict of interest based upon an allegation that Ms. General supported the Respondent, Mr. Anthony Laughing during a time of community struggle in the late 1980's.

Again, the Court examined this assertion and was again guided by the principles that are provided for in federal law regarding conflict of interest. In this instance, because there is no familial relationship between Ms. Rowena General and Mr. Anthony Laughing which falls into the restricted circle, and there is no reason to assume that Ms. General's impartiality was not intact, the Court finds that there is no conflict of interest by Ms. Rowena General as well.

Although the Court does not find that there was a conflict of interest for either Ms. Darlene Francis or Ms. Rowena General, there is an issue which the Court needs to further address. The fact that a strenuous objection was made by Ms. Joyce King regarding Ms. Darlene Francis' presence at the SRMT LDT proceeding, the Court feels this objection should have been considered in greater detail, and to provide an opportunity for Ms. Sawyer to have whatever evidence and/or testimony Ms. King was going to proffer to be taken by the SRMT LDT.

The fact that a witness who could have potentially altered the outcome of the SRMT LDT decision did not testify is a hindrance to fully examining all potential evidence. Particularly in the case where there is no record of the SRMT LDT final hearing available to the Court or the parties. The SRMT LDT did not find that there was a conflict of interest between Ms. Darlene Francis and Ms. Joyce King and again the Court concurs. However, the Court finds that the purpose of the Land Dispute process would have been better served if Ms. Francis had voluntarily recused herself, or if an alternate means of permitting Ms. Sawyer to submit the information apparently held by Ms. Joyce King to the LDT was provided. (This would have satisfied the Appellant's argument that the Court now has to address on appeal.)

Our finding in this regard is further supported by the record of this case where we can note that parties to the SRMT Land Dispute process are not permitted to 'cross examine' witnesses directly, or immediately, in front of the LDT. In its place, according to the record of this case, LDT parties are permitted to submit questions to the LDT which may then, or may not, pose those questions to the party or witness. This is contrary to the rules and procedures that the SRMT Court must follow. *See*, SRMT Rules of Civil Procedure Section VI [Rule 3] (a), Section XIV [Rule 11] (A), Section XVII [Rule 14] (A), Section XXI [Rule 18] (D). In the present matter, it does not appear that this alternative method was offered to Ms. Sawyer or Ms. King, and if so, the respondent would have had an opportunity to respond.

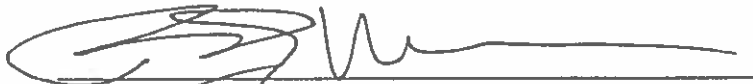
When a Judge from the St. Regis Mohawk Tribal Court feels that there is the potential for, or there is an actual conflict of interest, that issue is immediately made public to all parties involved so that there is no appearance of impropriety. While the Court doesn't see a conflict of interest between Ms. King and Ms. Francis, the Court reiterates that in the name of equitable practice the SRMT LDT may have been better served if Ms. Francis had removed herself from the process, affording the Appellant the opportunity to have their witness testify, and or offer whatever evidence to the SRMT LDT, so a decision can be rendered based upon all available evidence.

## CONCLUSION

Therefore, the St. Regis Mohawk Tribal Court finds that there was no conflict of interest between Ms. Darlene Francis and Ms. Joyce King. The Court further finds that no conflict of interest existed between Ms. Rowena General and Mr. Anthony Laughing.

The Court does however find that because potentially highly relevant evidence was not provided because Ms. Sawyer's witness was not afforded the opportunity to proffer evidence, the Court orders that the Appellant be given an opportunity to present Ms. Joyce King in St. Regis Mohawk Tribal Court as a witness for the Appellant, so that her testimony be made part of the record. At this time and pursuant to the SRMT Laws, the opposing party will be given an opportunity to cross examine pursuant to the laws and rules of the SRMT. Wherefore, a hearing will be held in St. Regis Mohawk Tribal Court on July 23<sup>rd</sup>, 2014 at 4:00 pm to address this issue.

Entered by my hand this 20<sup>th</sup> day of June, 2014.

A handwritten signature in black ink, appearing to read 'Peter J. Herne', written over a horizontal line.

Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court